REMARKS

Reconsideration of this application is requested.

Claims 32-64, and newly added dependent claim 65, are pending in the application. Applicants' check in the amount of $9.00 for one extra dependent claim at small entity basis is enclosed. Please credit any overpayment or charge any deficiency to undersigned counsel's Deposit Account No. 15-0508.

The allowance of claims 55-60 is noted with appreciation. New claim 65 is dependent on allowed claim 55 and, hence, likewise should be allowed. Allowed claim 57 has been amended to obviate an informality.

In order to expedite prosecution, cosmetic, clarifying amendments have been made to the syntax and/or grammar of claims 32, 44-50, 61, and 63 in a *bona fide* effort to also place these claims in better form for allowance. The amendments do not introduce new matter.

Claims 32-36, 38-43, 45, and 49-54 were rejected under 35 U.S.C. §102(b) as allegedly being "clearly anticipated or at least anticipated by Giret *et al.*, U.S. 5,409,640, column 9, line 47-column 11, line 10, ...especially Example VII containing, inter alia, 3% coconut monethanolamide." This rejection is traversed in part by the clarifying amendments to claims 32, 45 and 50, and by the following remarks.

The Applicants' invention is directed to providing, as an article of commerce, a liquid flowable form of a monoalkanolamide that is normally substantially solid and water insoluble at a temperature below 30° C, supplied as a phase stable, cold pumpable, liquid aqueous monoalkanolamide delivery system that can be advantageously stored for later incorporation by

cold mixing into a separately prepared liquid aqueous formulation containing at least one principal surfactant. The Applicants' liquid monoalkanolamide delivery system is not a finished formulation, but a concentrated high-solids product containing normally solid monoalkanolamide in liquid form. Further Applicants' liquid monoalkanolamide delivery system is a concentrated high solids emulsion which is surprisingly flowable and pumpable at temperatures where the monoalkanolamide would normally solidify. See the description on page 7, starting at line 18 through substitute page 8, line 8, page 9, lines 7-31 and the Examples.

The monoalkanolamide emulsifying surfactant in Applicants' surfactant emulsion need only be sufficient to solubilize and emulsify the monoalkanolamide to a phase stable, cold mixable liquid form. Hence, the Applicants teach the monoalkanolamide emulsifying surfactant as an emulsifier for the monoalkanolamide, not as a principal surfactant of a finished product into which the liquid aqueous monoalkanolamide delivery system may be later incorporated. The monoalkanolamide can be emulsified by blending the monoalkanolamide with a monoalkanolamide emulsifying amount of surfactant at ambient room temperature, heating the blend to a temperature sufficient to emulsify the monoalkanolamide, then cooling the emulsion, which can be stored until needed. Thus, Applicants' liquid aqueous monoalkanolamide delivery system is a high solids, (i.e., concentrated) composition that resolves the industrial formulator's or cosmetic practitioner's need for a way of delivering normally solid monoalkanolamide in liquid, flowable, pumpable form into a separately prepared formulation containing a principal surfactant. Moreover, Applicants' liquid aqueous

monoalkanolamide surfactant emulsion can be provide as an article of commerce that can be stored and later processed into a separately prepared aqueous formulation containing a principal surfactant, and which remains phase stable and pumpable at a temperature in a range of zero to 30 °C, making it useful for cold process mixing.

In contrast, Giret *et al.* do not teach a liquid form of cold mixable monoalkanolamide. Giret *et al.* do not even teach a cold mixing process, much less the incorporation of a normally solid monoalkanolamide supplied in an aqueous liquid form useful in such a process.

The teachings of Giret *et al.* are directed to complex, multiphase, finished emulsion products having a water phase and two oil phases, one of which requires a vegetable oil adduct (i.e., maleated soybean oil (Ceraphyl GA)). The cited disclosures in col. 9, lines 47 through col. 11, line 10 and Example VII, simply teach the preparation of finished emulsion products employing a conventional hot process. As described in Example VII, the principal surfactants of the finished formulation are already contained in a water phase (A), the monoalkanolamide is contained, along with the product moisturizing and oil ingredients, in a water-free first oil phase (B), and the oil phase (B) is added to the water phase (A) at an elevated temperature of about 40-50 °C, to form an oil in water emulsion and into which the remaining ingredients are added, and the second oil phase (C) of the formulation is then included to produce the finished product. As noted by the Examiner, Giret *et al.* does not use Applicants' nomenclature of "emulsifying surfactant", and cannot, for the simple reason that Giret *et al.* do not teach the emulsification of monoalkanolamide with a monoalkanolamide emulsifying surfactant to form a monoalkanolamide surfactant emulsion as taught and defined by Applicants on page 7 starting

at line 26 through page 8, line 8. Giret *et al.* do not employ or teach either the preparation or use of a liquid form of the monoethanolamide, or the delivery of monoethanolamide in the form of a cold mixable aqueous surfactant emulsion or even the practice of incorporating a monoethanolamide in a cold mix process.

"Anticipation requires that a single prior art reference describe *each and every limitation of a claim* either explicitly or inherently." *Atlas Powder Co. v. IRECO Inc.*, 51 USPQ2d 1943, 1945-46 (Fed. Cir. 1999), emphasis added. "Absence from the reference of any claimed element negates anticipation." *Rowe v. Dror*, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997). "When a claimed invention is not identically disclosed in a reference, and instead requires picking and choosing among a number of different options disclosed by the reference, then the reference does not anticipate." *Akzo N.V. v. International Trade Commission*, 1 USPQ2d 1241, 1245-46 (Fed. Cir. 1986).

There is no teaching in Giret *et al.* of Applicants' inventive, phase stable, pumpable, liquid aqueous monoalkanolamide surfactant emulsion useful as a delivery system for normally solid monoalkanolamide in a cold mixing process. Applicants' limitation as to cold mixing cannot be ignored in view of the allowed subject matter of claims 55-60, as set forth in the statement of reasons for allowance set forth in the Office Action on page 4, in paragraph 6, that: "The prior art of record doesn't disclose or fairly suggest the cold mixing process of claims 55-60 herein." Thus, Giret *et al.*, is inapplicable and cannot anticipate the subject matter of applicants' claims 32-36, 38-43, 45, and 49-54, as presented of record. Applicants respectfully request that the rejection under §102 be withdrawn.

Claims 37, 44, 46-48, 58 and 61-64 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Giret *et al.*, on the basis of the same portions cited above. This rejection is traversed for the reason that Applicants have shown above that Giret *et al.* is inapplicable, which discussion is repeated herein by reference. The rejection is further traversed by the clarifying amendments to claims 44, 46-48, 61 and 63, and, in particular, is traversed as to claim 58, on the basis that the inclusion of claim 58 in the listing of rejected claims is improper.

Claim 58 was deemed to have allowable subject matter in the Office Action on page 4, in par. 6, which specifically sets forth in the statement of reasons for the indication of allowable subject matter that: "The prior art of record doesn't disclose or fairly suggest the cold mixing process of claims 55-60 herein." Claim 58 is a cold mixing process claim and is directly dependent on an allowed claim, claim 55. Hence, the subject matter of claim 58 is clearly allowable. The inclusion of claim 58 in the listing of rejected claims, therefore, is improper and should be withdrawn.

In order to establish a *prima facie* case for obviousness, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1974). Additionally, there must be a teaching, suggestion or incentive supporting the combination. *In re Geiger*, 815 F.2d 686, 2 USPQ2d 1267, 1278 (Fed. Cir. 1987).

Applicants have already fully argued the issues regarding the teachings of Giret *et al.*, above, and the foregoing are repeated here by reference. As previously pointed out, Giret *et al.* is not applicable and do not teach or suggest the delivery of normally solid

monoalkanolamide to a separately prepared liquid aqueous formulation containing at least one principal surfactant as a cold mixable, phase stable, pumpable liquid aqueous monoalkanolamide surfactant emulsion. The cited col. 5, lines 53-59, Example VII, column 2, lines 41-44, and col. 7, lines 8-23 in Giret *et al.* are merely general descriptions of finished cleaning formulations, the selected principal cleansing surfactants and isolated ingredients. The cited sections do not supply the missing requisite suggestion or incentive to prepare the cold mixable liquid aqueous combination taught by Applicants. It is well established that all elements of a claim can be known in the art yet the combination of the elements can still be patentable. "Most, if not all, inventions are combinations and mostly of old elements." *Richdel, Inc. v. Sunspool Corp.,* 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983).

As established above, Giret *et al.*, is inapplicable to the ultimate parental claim from which claims 37, 44, and 46-48 depend, and hence cannot render obvious the subject matter of these dependent claims. Likewise, the specific combination of Applicants' phase stable, pourable, and pumpable liquid monoethanolamide surfactant emulsion of claims 61-64 is neither taught, nor suggested, by Giret *et al.* Applicants submit that claims 37, 44, 46-48, 61-64, as presented of record, like claim 58, also contain allowable subject matter. Thus, the rejection under §103 on the basis of Giret *et al.* should be withdrawn.

Applicants submit that all the pending claims as presented of record contain allowable subject matter. An early and favorable allowance of all pending claims is solicited.

Respectfully submitted,

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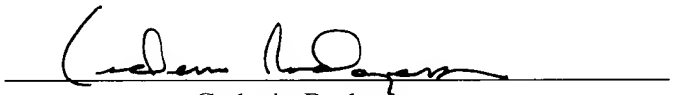

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